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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/813,808

Filing Date: March 22, 2001

Appellant(s): MAERZ ET AL.

John F. Guay

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 27, 2008 appealing from the Office action mailed 30 June 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is NOT correct.

All claims are correct except for claim 39.

Claim 39: The system of claim 38, wherein said means for surveying further comprises determining said initial day's rating based on the first twenty-one days that a pilot is grouped into a portfolio

(8) Evidence Relied Upon

6,505,147

Keiser et al

01-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1, 5-9, 11, 13, 19-29, 31, 33-34, 37 and 40-48 are rejected under 35 U.S.C. 102(e) as being anticipated by Keiser et al. (US Patent 6505174).

With regards to claims 1 and 28, Keiser teaches a method and corresponding system for establishing a product for investment in pilots for television shows and movies, the method comprising: receiving one or more pilots (col. 9, lines 14-16); assigning a rating value to each of said one or more pilots (col. 7, lines 15-18; col. 17, lines 30-39); grouping said one or more pilots into a portfolio based on said rating value of each pilot (col. 7, lines 15-16: *the Examiner interprets "fastest 20 movers up and fastest 20 movers down" as separate categories of listing based on ratings*); and offering said portfolio to potential investors for investment through a portfolio exchange (col. 9, lines 14-26).

With regards to claims 5 and 33, Keiser teaches the step wherein said rating value is based on whether a network has ordered the pilot (see col. 7, lines 15-18; col. 17, lines 30-39).

With regards to claims 6 and 34, Keiser teaches the step wherein said rating value is based on a pilot history (see col. 17, lines 30-39).

With regards to claims 7 and 29 Keiser teaches the step further comprising reporting an investment history of said portfolio (see col. 17, lines 35-67).

With regards to claim 8, Keiser teaches the step wherein said investment history is reported over the Internet (see col. 17, lines 35-67 and Fig 10).

With regards to claim 9, Keiser teaches the step comprising reporting said investment history by use of a computer to display investment data (see col. 17, lines 35-67 and Fig 10).

With regards to claims 11 and 31, Keiser teaches the step comprising branding said portfolio (see col. 6, lines 62-64; col. 7, lines 8-12).

With regards to claims 19 and 40, Keiser teaches the step of assigning a rating to a pilot further comprises providing a script-talent listing (see col. 6, lines 53-67).

With regards to claims 20 and 41, Keiser teaches the step of assigning a rating to a pilot further comprises calculating a script-talent rating based on a percentage of times a script-talent is listed (see col. 6, lines 53-67, col. 7; lines 1-17, 53-67).

With regards to claims 21 and 42, Keiser teaches the step of conducting a survey of said pilot further comprises determining a production rating (see col. 5, lines 40-50; col. 17, lines 34-46).

With regards to claims 22 and 43, Keiser teaches the step further comprising designating said production rating with a value when a script matures to become one of said pilots (see col. 5, lines 40-50; col. 17, lines 34-46).

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With regards to claims 23, 44 and 45, Keiser teaches the step of assigning a rating to a pilot further comprises conducting a mock trading procedure over the Internet for said pilot (see col. 1, lines 49-55).

With regards to claims 24 and 46, Keiser teaches the step of conducting a mock trading procedure generates a rating based on a number of times a pilot is traded (see col. 7, lines 15-18; col. 17, lines 8-12).

With regards to claim 25, Keiser teaches the step further comprising calculating pilot ratings by use of a computer (see col. 7, lines 15-18; col. 17, lines 8-12).

With regards to claim 26, Keiser teaches the step further comprising calculating said pilot ratings by aggregating database of rating inputs (see col. 7, lines 7-23).

With regards to claim 27, Keiser teaches the step further comprising accessing said database of rating inputs via the Internet (see col. 7, lines 7-23).

With regards to claim 47, Keiser teaches the step further comprising a database for aggregating ratings forming said portfolio (see col. 22, lines 1-14).

With regards to claim 48, Keiser teaches the step further comprising a computer for accessing said database via the Internet (see col. 22, lines 1-14).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10, 12, 14, 15-18, 36, 38, 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keiser et al.

With regards to claim 10, Keiser is as discussed above.

Keiser does not explicitly teach the step of reporting an investment by use of a telephone to relay investment data.

However, Keiser teaches the step comprising reporting said investment history by use of a computer to display investment data (see col. 17, lines 35-67 and Fig 10). Official notice is hereby taken that it is old and well known to report transactions by use of a telephone to relay transaction data. *For example, in the banking sector, all account activities (debit and credit) involving a customer that can be displayed to said customer via the Internet can also be relayed to the customer over the telephone via automated telephone services. That is, the customer (using a username and password) can view all account activities online or may listen (using account number and password) to the same information concerning said activities over the telephone.*

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Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Keiser to include the step of reporting said investment by use of a telephone to relay investment data, because it provides the user with an alternative to a computer or the internet.

With regards to claims 12, 14, 15-17, 36 and 38, Keiser is as discussed above.

Keiser does not explicitly teach conducting a survey of a pilot to determine a trade volume; wherein said survey is conducted over the internet; conducting said survey by use of a computer to aggregate trade volume data; and conducting said by use of any of a telephone, modem or wireless technology to relay trade volume data; conducting a survey of a pilot comprising determining an initial day's rating for said pilot.

Keiser teaches online market research tool which allows market research users to access information about traders (see col. 5, lines 40-50; *it is well known that one of the ways for conducting a market research is through surveys which are used to generate statistical data for analysis*)

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Keiser's online market research tool to include a survey to determine a trade volume as well as aggregate and relay trade volume data in order to provide useful statistical information about the marketability of the pilots thereby enhancing the efficiency of the system.

With regards to claims 13 and 37, Keiser teaches the step wherein said trade volume is based on an average exchange trading day (see col. 22, lines 25-37).

With regards to claims 18 and 39, Keiser is as discussed above.

Keiser does not explicitly teach the step of determining an initial day's rating is based on the first twenty-one (21) days that a pilot is grouped into a portfolio.

Keiser teaches step of determining an initial day's rating based on varying days (1 day, 7 days, 30 days) that a pilot is grouped into a portfolio (see col. 5, lines 40-50; col. 7, lines 54-64).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Keiser to include the step of determining an initial day's rating based on the first twenty-one (21) days that a pilot is grouped into a portfolio *since the applicant's specification does not identify any specific advantage of having an initial day's rating based on the first 21 days that the pilot is grouped into a portfolio.*

(10) Response to Argument

The Examiner summarizes the various points raised by the Appellant and addresses them individually.

A. Rejection of claims 1, 5-9, 11, 13, 19-29, 31, 33-34, 37 and 40-48 under 35 U.S.C. § 102(b) as being anticipated by Keiser.

1. Regarding claim 1 Appellant asserts that Keiser fails to teach “*grouping said one or more pilots into a portfolio based on said rating value of each pilot....offering said pilot to potential investors for investment through portfolio exchange*” (see Appeal Brief, pages 4-7).

In Response: The Examiner respectfully disagrees and first directs The Board to the language of claim 1. Claim 1 recites one or more pilots. A reasonable interpretation of this recitation would

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be either a single pilot or plurality of pilots, meaning that a single pilot can be grouped into a portfolio. Since the recitation is in the alternative, the language of claim 1 is clearly taught by Keiser, i.e, offering one pilot (portfolio) to potential investors.

Keiser teaches an exchange for trading derivative financial instruments representing movies, talents, CDs, and television programs. These derivative financial instruments also include a list of movies in various stages of production and other entertainment –oriented assets which are offered to investors (col. 6, lines 44-62, col. 9, lines 14-26). In the simplest interpretation of claim 1, Keiser teaches *grouping said one or more pilots into a portfolio based on said rating value of each pilot....offering said pilot to potential investors for investment through portfolio exchange* in that a single pilot (constituting a portfolio as an alternative to plurality of pilots) is listed or sorted according to name, genre, production status, *biggest gainers*, *biggest losers*, *fastest movers* today, etc, for potential investors (col. 6, lines 63 through col.7, line 17). The “fastest movers up, biggest gainers and biggest losers” can simply be interpreted as grouping each single instrument (pilot) based on ranking or rating.

For these reasons, Keiser clearly teaches *grouping said one or more pilots into a portfolio based on said rating value of each pilot....offering said pilot to potential investors for investment through portfolio exchange* given the broadest reasonable interpretation.

2. Regarding claim 28, Appellant asserts that since Keiser fails to teach the method steps in claim 1, Keiser also fails to teach the recited means in claim 28 for carrying out these operations (see Appeal Brief, page 7).

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In Response: The Examiner has addressed the method steps in claim 1. Furthermore Keiser clearly teaches the means for carrying out these operations (col. 8, lines 13-67).

3. Regarding claim 5, Applicant asserts that Keiser fails to teach, *“wherein said rating is based on whether a network has ordered the pilot”*.

In Response: The examiner respectfully disagrees. Keiser clearly teaches ratings based on potential box office revenue at col. 6, lines 63 through col.7, line 17, col. 18, lines 19-39, col. 23, lines 45-54.

4. Regarding claims 13 and 37, Applicant noted that the rejection under U.S.C. 102 is improper.

In Response: The Examiner admits this rejection is a typographical error and was intended to be rejected under U.S.C. 103. No argument is presented as to facts recited in the rejection.

5. Regarding claim 10, Applicant asserts that the investment history in this claim is history related to the same portfolio offered to investors for investment through a portfolio exchange.

In Response: The Examiner respectfully disagrees. Again going by single security portfolio, Keiser in col. 7, lines 35 – 64, teaches that traders can generate reports for display including: list of top market performers, e.g., the top 10 traders in percentage portfolio growth for different categories: last week, last month, last quarter etc (col. 7, lines 54-64). Examiner asserts that

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relaying such historical information via the telephone instead of a visual display is old and well known. *For example, in the banking sector, all account activities (debit and credit) involving a customer that can be displayed to said customer via the Internet can also be relayed to the customer over the telephone via automated telephone services. That is, the customer (using a username and password) can view all account activities online or may listen (using account number and password) to the same information concerning said activities over the telephone*

6. Regarding claims 12, 14, 15-17, 36 and 38, Applicant asserts that there is nothing in Keiser to suggest the claimed feature of “conducting a survey of said pilots to determine a trade volume”.

In Response: The Examiner respectfully disagrees. Keiser teaches market research tool at col. 5, lines 40-50. Furthermore, Examiner asserts that this feature is analogous to the Nielsen ratings in TV broadcasting in which a survey of a particular TV program is carried out on viewers to determine the number of people who actually watched the program, leading to the rating of such a program. It would have been obvious to one of ordinary skill in the art at the time of the invention to Keiser to include this feature in order to ascertain the number of investor interested in the portfolio.

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7. Regarding claims 18 and 39, Applicant again asserts that Keiser fails to teach grouping one pilot into portfolio, let alone determining a rating value on the first twenty-one days that a pilot is grouped into a portfolio.

In Response: The Examiner respectfully disagrees. The Examiner has addressed the grouping feature in response to claim one. Furthermore, Examiner asserts that Keiser teaches determining an initial day's rating based on varying days (1 day, 7 days, 30 days) at col. 5, lines 40-50, col. 7, lines 54-64. It would have been obvious to one of ordinary skill in the art to modify Keiser to include twenty-one days or any number of days for that matter. Since Keiser described the capability to determine an initial day's rating based on varying days, it is capable of doing so for the first twenty one days.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,
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